Later in the Clayton Act debates, Mr. Henry of Texas observed as to the Sherman Act history that:

> "The amendment was agreed to without opposition. A little later in the proceedings the bill with amendments was referred to the Committee on the Judiciary, and when the committee reported it back to the Senate the George amendment was left out, because *all agreed that the act as written without that language in it meant exactly what was contained in the George amendment.*"
>
> (51 Cong. Rec. 9540, emphasis added.)

B. Capper-Volstead Act

1. General

The legislative record of the Capper-Volstead Act includes action on the following:

H.R. 7783 (Hersman), 1919, 66th Cong. 1st Sess.

H.R. 7784 (Barbour), 1919, 66th Cong. 1st Sess. (amending §6 of Clayton Act to authorize stock and dividends)—Hearings by House Judiciary —no report

S. 845 (Capper), 1919, 66th Cong. 1st. Sess. (companion bill to H.R. 7783 and 7784)—no hearings or action

H.R. 13931 (Volstead), 1920, 66th Cong. 2nd Sess.

House Report 939; Passed House 5-31-20; Senate Judiciary Report 655 [with amendments]; Passed Senate; Conferees fail to act (differences re enforcement under §2.)

S. 4344 (Capper) 66th Cong., 2nd Sess. (companion bill to H.R. 13931), hearings before Judiciary.

H.R. 2373 (Volstead), 67th Cong. 2nd Sess. S. 983 (Capper), 67th Cong. 2nd Sess. (Companion bill)

(expands "such products of their members" to "such products of persons so engaged" and adds marketing agents in common and necessary contracts.) Passed by House (May 4, 1921) and Senate (February 8, 1922.)

2. California Associated Raisin Co

a. *Nature of Organization and Operations*

(1) *F.T.C. Report of June 8, 1920:* Included in the report of the Senate Hearings in 1921 was a recent report by the Federal Trade Commission, which recited, in part as follows:

"FEDERAL TRADE COMMISSION, *Washington, June 8, 1920.*

"Sir: On September 30, 1919, you requested the Federal Trade Commission to make an investigation of the California Associated Raisin Co. (hereinafter called the Raisin Co.) and to advise you whether that company, first, 'is obtaining and maintaining more than fair and reasonable prices for its products; and, second, (under sec. 6 (c) of the Federal Trade Commission act), to make recommendations for the readjustment of the business of said corporation in order that the corporation may hereafter maintain its organization, management, and conduct of business in accordance with law. . . .'

"In compliance with your request the Federal Trade Commission instituted an inquiry, giving notice thereof to the Raisin Co., in the course of which a large amount of testimony was given, a

transcript whereof accompanies this report to you. . . . The essential facts disclosed and the conclusions and recommendations of the Federal Trade Commission thereon are now submitted for your consideration.

"Before proceeding to the examination of the two questions propounded by the Attorney General to the Federal Trade Commission a general statement with respect to the raisin industry may be useful for the purposes of an understanding of such a discussion.

"THE CALIFORNIA ASSOCIATED RAISIN CO. AND THE RAISIN INDUSTRY.

"The raisin industry in the United States is at present practically confined to a district within a radius of less than 50 miles around Fresno, Calif., where conditions for growing, but more particularly for curing raisins, are peculiarly advantageous. Prior to the organization of the Raisin Co. the raisin growers were virtually at the mercy of those engaged in the business of packing and selling raisins, and realized from their efforts a varying and uncertain return in the marketing of their crops. Those packers being in control of the purchasing power, secured to themselves the larger profit, while the grower frequently failed to realize the cost of production.

"Seeking to remedy this condition, the growers repeatedly attempted cooperative organizations, which failed largely because the form of the various organizations did not include adequate provision for finance and credit. Other devices were

attempted without success and until the organization of the Raisin Co. the condition of the growers was, to say the least, unfortunate.

"Whether there was or was not a combination, or agreement without actual combination, among the packers who were then the purchasers of the raw supply, is immaterial to this inquiry. The inequality of their situation forced the growers to enter the contest for control, at least so far as control was necessary, for the protection of their individual interests. This effort on the part of the growers has unquestionably been successful. The question now presented is whether the effort has outrun its proper bounds and in turn become a cause of oppression.

. . .

"PRESENT ORGANIZATION, MANAGEMENT, AND CONDUCT OF BUSINESS.

"The California Associated Raisin Co. was organized and incorporated in 1912 under the laws of the State of California, with a total authorized capital stock of $1,000,000, consisting of 10,000 shares of a par value of $100 each.

"The ownership of the corporation is evidenced by common stock which, with respect to the original issue and assignment, is not limited to raisin growers or other agriculturists, but which in fact was originally subscribed for and purchased by merchants, professional men, and others as well as by vineyardists. On September 24, 1919, nongrowers to the number of 853 held 2,553½ shares of stock and growers to the number of 2,454 held 7,765½ shares of stock, of the par value of $100

each, the total number of stockholders being 3,307, the total number of shares outstanding being 10,319. The company then had a paid-in capital of $1,031,900 and a surplus of $323,568.76.

"Under a plan in operation subsequent to September 24; 1919, some 6,000 growers who have been selling their raisins under contract, but who have not been stockholders, are to be paid in part in stock of the corporation, which plan, if carried to conclusion, will increase the number of growers connected with the corporation, making the holdings of 1,000 nongrowers amount to approximately 265,000 shares of $1 par value and the holdings of 9,000 growers amount to approximately 1,425,650 shares of $1 par value, making a total paid-in capital of $1,690,650 and a surplus of $323,568.76:

"The capital stock is permitted to earn and distribute a dividend dependent upon the profitableness of the corporation's operation from year to year, with the limitation that there shall not be charged to any year's operations a dividend which will yield more than 8 per cent of the par value of the stock.

"After certain provisions for surplus to provide working capital have been complied with, any profit remaining after setting aside a sum of money equal to 8 per cent on the capital stock, is distributed back annually to the sellers of raisin grapes on a prorata basis proportionate to the tonnage delivered to the corporation by each individual grower."

(Senate Hearing,[1] H.R. 2373, pp. 9-12.)

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[1]Hearings before a Subcommittee of the Judiciary Committee, United States Senate, 67th Cong. on H.R. 2373, June 2, 7, 9, 11 and 20, 1921, entitled "Authorizing Association of Producers of Agricultural Products."

(2) *Testimony of John W. Preston,* attorney for competitors of California Associated Raisin Co.:

"Mr. Preston. The California Associated Raisin Co. is a commercial corporation in form. It was incorporated in 1912 by a few men, some of whom were raisin growers and others of whom were ordinary business men, such as merchants and bankers.

. . .

Mr. Preston. The plan of their organization on its face is a commercial corporation, with the same powers that any other ordinary commercial corporation would have. It does not claim to be a cooperative concern within the meaning of the California statute or within the meaning of the term as ordinarily understood. They do claim that they are cooperative in spirit, and by that they mean that they take over the crop from the grower by a long-term contract, and pool and grade it, seed and pack it or process it, and sell it, and then return to the growers all the net proceeds save and except 8 per cent on the capital and one-fourth of a cent a pound for surplus and betterments.

Senator Walsh of Montana. Then they make these contracts, apparently, not only with the stockholders of the corporation, but with people outside of the stockholders?

Mr. Preston. Yes, sir.

Senator Walsh of Montana. Now, let me inquire: You said that the stock was held by growers and by business men?

Mr. Preston. Yes. I will deal with that, if you will allow me, in this way. When this proceeding was begun in September, 1919, by the Attorney General before the Federal Trade Commission, the concern had contracts with 9,000 growers. Only 2,454 of them were stockholders. Eight hundred and fifty-three stockholders were ordinary businessmen who were nongrowers of raisin grapes. . . ."

(Senate Hearing, H.R. 2373, pp. 7, 17.)

(3) *Testimony of Carl E. Lindsay,* attorney for California Associated Raisin Co.:

"Before 1912, or before 1913, really, the growers were compelled to carry their raisins to these various packers, who had them absolutely at their mercy, and they having power which they did not hesitate to exercise in many ways . . . it simply meant bankruptcy to the raisin producers. They were not getting the cost of production. So there were several efforts made to organize, in order to escape the intolerable conditions that were prevailing.

"All of these efforts were futile because of the fact that in the peculiar raisin industry it is absolutely necessary that there should be a certain amount of capital employed. The packing houses have to be built, and property acquired, and seeding plants and seeding machinery and other machinery would have to be purchased and put up; and so finally, to make this part of the story short, the California Associated Raisin Co. was organized under practically the present plan—a capital stock corporation. This stock was sold—not all of it—to growers. Some of it was purchased by other

people interested in the district, bankers and merchants and others; and while they are not raisin producers, in a sense they are almost as much interested in a proper solution of this problem as the raisin producers themselves. . . . This money which they paid for their stock, after all, amounts to nothing more than a loan. It never was intended as a profit corporation at all, and the 8 per cent now which is paid by way of dividend to the stockholders is, after all, nothing more than what you might call interest for money loaned."

(Senate Hearing, H.R. 2373, pp. 43-44.)

(4) *Testimony of Wilie M. Griffin,* president of California Associated Raisin Co. His testimony covers over 40 pages of the hearing record, and gives a detailed account of the operations and structure of the raisin growers' organization. There was extensive questioning by Senator Walsh and other members of the subcommittee. The following excerpt is particularly pertinent to an understanding of the history of this association:

"It took quite a while to do it, but it was there that the idea of a capitalized company originated, to do ourselves what we had tried to get the packers to do for us; and it was out of that that the California Associated Raisin Co. grew, with a million dollars of capital. It was first called The Million Dollar Co., because we believed that anybody that had a million dollars—it looked so big to us that we believed that anybody that had a million dollars—could do anything they wanted.

"So we organized among ourselves the 'Million Dollar Co.' with the purpose of buying our own

crops. Like lifting yourself by your own bootstraps, it seemed almost an impossible task, but we did it anyhow, and after a long campaign we got $750,000 of the $1,000,000 subscribed. We got hardly any of it in money, because we did not have any money. I think out of the $750,000 we got about $250,000 or possibly $300,000 paid in real money, and the balance was paid in growers' notes covering a term of three years, one-third each year, on the instalment plan.

"At the same time, while it was independent, we formed a stock company and sold stock, most of it to the growers, probably 80 per cent of it to the growers; but it was a community affair. We did not confine the sale of stock to the growers. We sold some little to the bankers. I think the Fresno Clearinghouse Association, which was the organization representing the five banks of the city, took $15,000 worth of stock. The principal merchants took a thousand or two thousand dollars' worth of stock. The whole amount of stock that was sold outside of the growers was probably 20 per cent of the whole. I do not know the exact figure now, but I think it was about 20 per cent of the whole."

(Senate Hearing, H.R. 2373, pp. 97-98.)

(5) *Senate Debate.* There were repeated references to the raisin growers' association in the debates in the House and Senate:

Senator Walsh:

"The matter is illustrated, for instance, by the raisin growers' association in the State of Cali-

fornia. Here are a lot of people engaged in the business of growing raisins. The organization of this association and the establishment of agencies throughout the United States, as they have them, with bonded agents and with warehouses and all that kind of thing, calls for the investment of capital. Some of the members of the association are rich enough to take some capital stock. Others are not rich enough to do that. So those who are rich enough put in money in order to provide the necessary capital for the operation, and on that money capital thus contributed they get 8 per cent annually, and the rest of the profits of the business are divided ratably among the members; and it is such an organization as that that is contemplated here.

Mr. Smith of Georgia. And the 8 per cent limitation is intended as a protection to the membership who are not capital owners against the membership which may be large capital owners.

Mr. Walsh of Montana. Exactly; the Senator is correct about that. Now, under section 6 of the Clayton Act an association can be protected only when it has a membership without capital stock; and it was intended to extend this to associations that have capital stock, but that did not pay more than 8 per cent on that capital stock, the remainder of the avails to be divided exactly as the avails are divided among the associations organized under section 6 of the Clayton Act."

(60 Cong. Rec. 365.)

(6) *Failure to Qualify Under Section 6 of the Clayton Act.*

"By this section three classes of organizations are given certain exemptions under the antitrust laws. The Raisin Co.'s primary objects are such that that company may be brought within one of those classes. We purpose, now to show what changes are necessary to readjust it for inclusion therein, whereupon it could conduct its business in accordance with law.

"To conform to the legal requirements of an agricultural or horticultural organization instituted for the purposes of mutual help, the Raisin Co. must take the necessary legal steps to accomplish the following results:

(a) The elimination of capital stock and the substitution therefor, if necessary, of a nonprofit sharing basis of providing financial resources.

(b) The elimination of profit to the corporation or to its stockholders, as profit on the operations of the corporation.

(c) The restriction of membership or beneficial interest in the corporation to those whose interests are identical, i.e., to actual growers of raisin grapes."

(F.T.C. Report, Senate Hearing, H.R 2373, p. 14.)

(7) *Qualification Under Capper-Volstead Act:*

"House bill 2373, in its present form, would legalize the above institution; in fact the provisions of the bill would seem to have been drawn specifically to legalize such a concern. This concern limits its dividends on capital stock to 8 per cent."

(Statement by Mr. Preston, Senate Hearing, H.R. 2373, p. [illegible]2.)

"The matter is illustrated, for instance, by the raisin growers' association . . . and it is such an organization as that that is contemplated here."

(Senator Walsh, 60 Cong. Rec. 365.)

3. Sunkist System

There were at least a dozen specific references to the Sunkist System (generally called "California Fruit Growers' Association" or similar names, due to its then corporate title of "California Fruit Growers Exchange"). These may be roughly categorized as follows:

a. *Approval of Overall Economic Effect*

Senator Walsh:

"Indeed, everyone concedes that so far as they have yet gone in this country their operation has been wholly beneficial. Take the great California Fruit Growers' Association. It furnishes to the country a constant supply of the citrus fruits that it markets. The raisin growers organized an association whose operations were under consideration by the Federal Trade Commission, which reported that whether it was a combination coming under the Sherman Act or not, no harm had been done to the public, up to the time the investigation occurred at least, by reason of its operations."

(60 Cong. Rec. 373.)

Senator Capper:

"Mr. President, cooperative marketing by farmers is not theory. It has proved successful despite handicaps wherever it has been attempted. The various citrus fruit growers' associations in California have been a boon to the producers. They have

eliminated, to a large extent, the speculator, but they have not injured the legitimate middlemen who perform a necessary service in the process of distribution, and no one wants to eliminate him or deprive him of a fair profit. They have brought greater returns to the producer, while the consumer has not been asked to pay more."

(62 Cong. Rec. 2059.)

Senator Capper:

"As a result of intelligent cooperative marketing the 11,000 members of a California citrus fruit-growing organization distribute $75,000,000 worth of their products annually to jobbers at a cost of less than 1½ per cent. It costs the individual grower from 7 to 10 per cent to do the same thing. Here is a saving of from 5½ to 8½ per cent, due to cooperation in the handling of one of the most expensive crops put on the market."

(62 Cong. Rec. 2061.)

b. *Use as an Example*

Senator Walsh:

"I have indicated to the Senate that at the present time vast cooperative associations are actually in operation . . . The California Fruit Growers' Association has been operating for something like 15 years.

(62 Cong. Rec. 2122-23.)

Senator Walsh:

"I think if the Senator attends to the language he will appreciate that the purpose is not to limit any of these associations in the amount of actual profit. They first contemplate the organization of an as-

sociation without any capital stock at all. The members, just the members, turn in all their products together. They have no profits in the ordinary sense of the term, but they divide up whatever comes in in proportion to the amount which each contributes to the general fund; that is, the general fund of products. Take the Fruit Growers' Association, for instance. They are all single members with no stock whatever. One member contributes 1,000 boxes of fruit, another contributes 2,000 boxes of fruit, another 5,000 boxes of fruit, and the total amount is sold and the expenses paid and the avails distributed in proportion to the amount which each one has contributed. That is the first plan of operation."

(62 Cong. Rec. 2271.)

Senator Kellogg:

"I do not think that one organization should be required to take everybody into its fold. Take the California Fruit Growers' Association, which the Senator from Montana has mentioned. I believe he stated that about 7 per cent of the fruit growers are outside of that organization. That 7 per cent ought to be allowed to stay out and to sell their products individually or collectively or in any way they please."

(62 Cong. Rec. 2267.)

c. *In Recognition of Its Organizational Characteristics*

Senator Walsh:

"I had occasion some years ago to make a very careful and exhaustive examination into the organization of the California Fruit Growers' As-

sociation. I am satisfied that it has made fruit growing a great and profitable industry, when it was of doubtful success, and I am entirely confident that upon the whole the people of the United States have paid less for citrus fruits than they would have paid if the product were not put upon the market by the present organization which it represents."

(62 Cong. Rec. 2121.)

Senator Walsh:

"Such federation is already in operation and most beneficently so in the case of the California Fruit Growers' Association. I refer not to the California Raisin Growers' Association, of which mention has been made, but to the large cooperative association of the State of California which markets the citrus fruit product of that State. It has this kind of organization: There are local associations organized substantially as the associations contemplated and provided for in the bill are to be organized. Those associations are federated into a district association, and the district associations are federated into a State association. The State association has a common marketing agency in all the great cities. So that all the various local associations thus have one common marketing agency, but they federate themselves, and thus they secure added advantages by reason of the cooperative principle."

(62 Cong. Rec. 2277.)

Senator Thomas:

"I have been greatly impressed with the usefulness and benefits of the fruit growers' associations in California. It has seemed to me their very

success—and perhaps that is the principal reason why the Nonpartisan League has never been able to effectuate any sort of hold in the agricultural and horticultural sections of California—and, I think, the efficiency of the citrus growers' association, taking that as an example, is due to the fact that it acts independently of the raisin producers' association or of the olive growers' association, and so forth. That their distinctive energies, in other words, apply wholly and fully to one product is the secret of their great success. If they were to combine, as they could combine under a bill of this sort, I think they would cease to be popular on the one hand and I am inclined to think that their usefulness would be contracted upon the other."

(60 Cong. Rec. 315.)

d. *Reflecting Operating Practices*

Senator Kellogg:

"Look at the condition in California. I can remember only a few years ago when the fruit producers of California were bankrupt all the time. They had no facilities for marketing their products and no agents to furnish the products to the country as the country required them. There were no storage facilities and no coordination, but each man proceeded to dump his stuff upon the railroads. Consequently the markets were glutted; people could not buy all the products when they were glutted; and at other seasons of the year they had to pay enormous prices and many times could not get fruit. Now the producers have real scientific, businesslike organizations. They have built

their own warehouses for the handling of their fruit; they have their own agents; they guarantee deliveries of good oranges and other fruit so that any man can buy from one of those farmers' organizations and know that the product will be good. The same thing to some extent applies to apples. The result has been that the public has paid less according to the standard prices of the country, and the producer has received more. It will be found to-day that the difference between what the fruit producer receives and what the consumer pays is less than applies in the case of most other products. It represents a small, fair profit over and above the actual handling cost. Why? Because they have their skilled agents."

(60 Cong. Rec. 360-61.)

Senator McCumber:

"I ask the Senator if he thinks the action of the California Fruit Growers' Association, for instance, in advising the fruit growers to raise a kind of fruit which would be marketed at such a time as would not conflict with the fruit grown in Florida, would be guilty of an offense against the Sherman antitrust law; or if they advise, under the present situation, to withhold their products from market for better prices, or until the products have been sold in other sections of the country, would be a violation of any antitrust law?

Mr. King. I think not."

(60 Cong. Rec. 312.)

Senator Kellogg:

"The language is:

'Persons engaged in the production of agricultural products as farmers, planters, ranchmen, dairymen, nut or fruit growers may act together in associations, corporate or otherwise, with or without capital stock, in collectively processing, preparing for market, handling, and marketing in interstate and foreign commerce, such products of persons so engaged.'

The object of that, of course, was to confine these privileges to the cooperative associations of farmers who not only produce but prepare their production, like oranges, for the market. The Senate committee suggested an amendment to read:

'That the association shall not deal in products of nonmembers to an amount greater in value than such as are handled for it by members.'

That is in the Senate substitute."

(62 Cong. Rec. 2053.)

Senator McCumber:

"But the things which the Senator enumerated as things which might be contrary to the antitrust law are the very things which are being done and have been done for years by the California Fruit Growers' Association, and by certain dairy associations in the United States, and I have never known a time in which they have unduly enhanced the price of agricultural products."

(60 Cong. Rec. 313.)